Compensating Differentials for Sexual Harassment

by

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Abstract

Although workplace sexual harassment is illegal, many workers report that they have been victims of sexual harassment. Sexual harassment may result in lower productivity, which would reduce wages. Alternatively, workers may receive a compensating differential for this undesirable working condition, which would produce a positive effect of sexual harassment on wages. Data on claims of sexual harassment filed with the Equal Employment Opportunity Commission are used to calculate the first measures of sexual harassment risks by industry, age group, and sex. This paper shows that workers receive a compensating wage differential for exposure to the risk of sexual harassment.

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Compensating Differentials for Sexual Harassment

A considerable share of the workforce reports that they have been sexually harassed on the job. For example, a 1994 survey of federal employees by the U.S. Merit Systems Protection found that 44 percent of women and 19 percent of men had experienced unwanted sexual attention on the job in the preceding two years. Sexual harassment is prohibited under Title VII of the Civil Rights Act as discrimination on the basis of sex, and sexual harassment claims comprise a large component of charges filed with the Equal Employment Opportunity Commission (EEOC).[1]

While sexual harassment is universally considered to be an undesirable working condition, this alone does not warrant its illegal status under antidiscrimination law. After all, individuals are permitted to work in jobs with arguably far worse working conditions, such as those in which workers face a high risk of death or disabling injury. An alternative to laws prohibiting sexual harassment would be to allow workers to choose jobs with higher risk of sexual harassment and receive higher pay as a compensating differential.

But sexual harassment is not simply another undesirable working condition. Sexual harassment is also viewed as an instrument of power and intimidation rather than primarily as an expression of sexual desire.[2] Sexual harassment may cause victims to be less productive – indeed, sexual harassment is a form of employment discrimination precisely because it alters the "terms, conditions, or privileges of employment" and interferes unreasonably with the ability of those in the protected classes to perform their jobs. Thus, instead of providing a pay premium,

[1] Sexual harassment is also prohibited under many state anti-discrimination laws, which often have more severe remedies than Title VII.

[2] See, for instance, Catharine MacKinnon (1979), Gertrud M. Fremling and Richard A. Posner (1999) and Richard A. Posner (1999). In a series of papers, Vicki Schultz argues that businesses have overly focused on prohibiting sexual expression that is neither discriminatory nor a threat to gender inequality, while overlooking other forms of harassment that has a discriminatory impact but does not fit into the paradigm of sexual harassment. See, for example, Vicki Schultz (2003, 2006).

sexual harassment may be associated with lower pay if harassment reduces worker productivity by, for instance, increasing absenteeism, inducing inefficient turnover, and generally wasting work time as workers attempt to avoid interaction with harassers.

Thus, the relation between sexual harassment and wages is not predictable a priori. While pay differentials on the basis of sex and on job risks and other working conditions have been widely studied by economists, sexual harassment has received little attention within the economics literature, and for the most part the economics literature has focused on job satisfaction and turnover.[3]

This paper provides evidence of the relation between the risk of sexual harassment and wages. While one approach to detecting the effect on wages of sexual harassment would be to estimate wage equations controlling for whether an individual reports that he or she had been sexually harassed, sexual harassment on the job is unlikely to be exogenous with respect to wage, and it is difficult to identify appropriate variables that would allow instrumental variables estimation. In addition, there is almost no data reporting information on sexual harassment as well as on wages and on other determinants of wages.

To avoid these problems, I adopt the conventional hedonic wage methodology used to estimate compensating wage differentials for risk of injury or death. Specifically, using data on individual charges filed with the EEOC (which I obtained under the Freedom of Information Act), I calculate gender-specific estimates of the risk of sexual harassment by industry and age group.

[3] Examples of papers in the economics literature analyzing sexual harassment include Heather Antecol and Deborah Cobb-Clark (2006), examining the effect of sexual harassment on job satisfaction and quit intentions; Kaushik Basu (2003), providing a theoretical analysis of how laws prohibiting sexual harassment can improve welfare for all workers; and David N. Laband and Bernard F. Lentz (1998), examining the effect of sexual harassment on lawyers' pay, job satisfaction, and quit intentions.

Using data from the Current Population Survey (CPS), I estimate wage equations controlling for the risk of sexual harassment and for other determinants of wages, including occupation and the percent female in the worker's industry. The wage equation estimates show that greater risk of sexual harassment is associated with a statistically significant wage premium. Women employed in jobs with an average probability of sexual harassment are paid a compensating differential of 25 cents per hour relative to comparable women employed in jobs with no risk of sexual harassment. Men likewise receive a compensating differential for risk of sexual harassment, with men employed in jobs with an average probability of sexual harassment paid a compensating differential of 50 cents per hour relative to comparable men employed in jobs with no risk of sexual harassment.

I. Background on Sexual Harassment Law[4]

Title VII of the Civil Rights Act of 1964 prohibits employers and labor unions from discriminating against employees or applicants "with respect to compensation, terms, conditions or privileges of employment because of race, color, religion, sex or national origin." Sexual harassment is neither defined nor specifically covered under Title VII. The interpretation of sexual harassment as a form of sex discrimination that is prohibited under Title VII developed over time as a series of cases made their way through the courts.[5]

In 1980, the EEOC issued "Guidelines on Discrimination Because of Sex." These Guidelines designated sexual harassment as a violation of Title VII and defined the two recognized categories of sexual harassment, quid pro quo (also referred to as harassment

[4] This section draws in part on my article "Sexual Harassment" in the CSWEP Newsletter, Spring 2009.
[5] See, for example, Reva B. Siegel (2003) for an overview of the evolution of sexual harassment as a form of sex discrimination.

involving a tangible employment benefit) and hostile work environment. The specific language is as follows:

> Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or impliedly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment.

Quid pro quo harassment occurs when a supervisor engages in activities that fall into the first two categories. Hostile work environment harassment by coworkers and supervisors that does not involve tangible employment actions falls into the third category. Examples include coworkers who tell obscene jokes, make sexual suggestions or requests for sex, or routinely make demeaning comments about women's ability to perform jobs because of their sex.

It is a clear violation of Title VII for employers (or their supervisors as agents of the employer) to demand that a woman provide sexual favors in order to retain or obtain employment benefits, and in these cases the employer is strictly liable. Employers have a possible defense against liability for hostile work environment harassment if the employer took reasonable care to prevent harassment (such as disseminating a policy against harassment and establishing reporting procedures) and promptly corrects any sexually harassing behavior, and if the employee unreasonably failed to take advantage of the employer's preventive or corrective opportunities. The employee is only entitled to relief if she takes advantage of the employer's procedures and remedies which generally means that the employee must report sexual harassing behavior to their employer.[6]

[6] An exception to the requirement to report sexual harassment to the employer would arise if employee is being harassed by a supervisor and there is no one else to whom to report the harassment.

In order to file a lawsuit after internal procedures have been exhausted, the employee must first file a charge with the EEOC or with the corresponding state or local Fair Employment Practices Agency (FEPA). After the charge is filed, the EEOC will investigate and attempt to resolve the claim without litigation. If the EEOC is not able to successfully resolve the case, the agency may bring suit in federal court, or, more commonly, issue a 'right to sue' notice to the charging party.

II. Prevalence and Rates of Sexual Harassment

The measure of sexual harassment risk used in this paper is calculated using charges of sexual harassment filed with the EEOC or the corresponding state or local Fair Employment Practices Agency (FEPA). About 90,000 individuals file claims of employment discrimination annually. About 14,000 of these claims include allegations of sexual harassment. There are 150 million individuals in the labor force, so clearly few workers file legal charges of discrimination generally or of sexual harassment. But this does not mean that sexual harassment is rare. As discussed earlier, generally employees who are sexually harassed must report such behavior to their employer, who is then given the opportunity to correct any sexually harassing behavior.

Thus many (and perhaps most) instances of sexual harassment will not be reported to the EEOC. It is also possible that some clearly invalid claims are reported to the EEOC. However, these are in the minority – calculations using the EEOC claims data show that only 13 percent of the sexual harassment claims filed in FY 2000-FY2004 are coded as "suitable for dismissal," while 37 percent are "potential cause" claims, with the remainder requiring additional investigation. The risk measure captures what are likely to be the most egregious instances of sexual harassment. They are similar to fatality risk measures in the sense that, just as the

probability of a workplace fatality is low, the probability of a sexual harassment claim being filed is also low.

I calculate gender-specific estimates of the risk of sexual harassment by industry and age group.[7] The numerators in this risk measure are the number of sexual harassment charges by industry, age group, and sex. The denominators are the corresponding levels of industry employment by age group and sex from the Current Population Survey (excluding self-employed workers who would generally not be able to claim sexual harassment against an employer).

Because the sexual harassment rates are calculated at the industry level, the biggest problem in calculating sexual harassment risk is missing data on industry codes in the EEOC claims data. Industry is not a required field on the EEOC claims records. Industry code is missing in about 28 percent of the claims prior to 2006. According to an EEOC employee, missing data on industry became an even greater problem beginning in 2006 (for example, NAICS code is missing for 56 percent of the claims in 2008), in part because in 2006 the EEOC switched from SIC codes to NAICS codes and the drop down menu for NAICS code was harder to use. For claims filed prior to 2006 with SIC code reported, the EEOC used a crosswalk to assign NAICS code. In addition, if the employer named in the claim could be linked to the EEO-1 database (e.g., private firms with 100 or more employees or private federal contractors with 50 or more employees), then the NAICS code reported in the EEO-1 form is transferred to the EEOC claims file. Thus, industry code is missing more frequently in smaller firms than in larger firms and is also missing far more frequently starting in year 2006 than in earlier years.

The number of claims by industry, age group, and sex are used as the numerators in the calculation of sexual harassment rates, so eliminating all observations with missing information,

[7] This follows the methodology to construct fatality rates by industry, age, and sex in W. Kip Viscusi and Joni Hersch (2008).

even if random, leads to lower sexual harassment rates for an industry–age group–sex than are true. If industry code is missing at random, then we have classical measurement error in an explanatory variable in the regression equation, and the coefficient on this variable will be biased toward zero. A regression of an indicator for missing industry on characteristics of claims shows that although there is some systematic variation in the probability that industry is recorded, observable characteristics explain fairly little of the variation in whether industry is reported. Controlling for age group, sex, whether the claim was reported to the EEOC or FEPA, indicators of strength of claim (from definitely litigate to dismiss), firm size, institution type (e.g., private employer, educational institution), filing year, and race, the adjusted R-squared is a very low 0.038 based on EEOC claims for the period FY 2000 – FY 2004. Thus, while recognizing that the sexual harassment rate is measured with error, the low predictive power of observable characteristics suggests that assuming the measurement error is largely random is not unreasonable.

Because the number of missing industry codes increased substantially after 2006, I use data for the 5 year period from FY 2000–FY 2004 to calculate the numerators in sexual harassment rate calculation. There are 48,741 individual claims that include sexual harassment as an issue. Of these claims, 42,065 are claims by women and 6,676 are claims by men. The denominators are based on employment data from the 2004 CPS excluding self-employed workers. The sexual harassment rates used in the wage equations are calculated by sex for two-digit industry (52 industries) and six age groups (15–24, 25–34, 35–44, 45–54, 55–64, and age 65 and older).

III. Patterns of Sexual Harassment Risk

Table 1 reports sexual harassment rates per 100,000 workers by sex and major industry as well as the percent female in the industry. Clearly women are far more likely to file a claim of sexual harassment than are men. The pattern across industries indicates that women are at a greater risk of sexual harassment in male-dominated industries, with the pairwise correlation between the female rate and percent female equal to -0.68 (p=0.01). The male and female rate is not correlated with each other, nor is the male rate correlated with percent female.

Figure 1 demonstrates the pattern of sexual harassment risk for women by age and major industry, while Figure 2 provides the corresponding graph for men. Mining is not included in the graph for women because the rate is far above that of the other industries and inclusion would distort the scale of the graph. With the exception of mining for men, there is an inverted U-shaped pattern of risk of sexual harassment with age for both men and women. For men in the mining industry, the risk of sexual harassment is highest for men in the youngest age group and the risk diminishes with age until the age group 45 – 54. The sexual harassment rate for women is especially high for women, peaking at 149 claims per 100,000 workers in age group 25–34. This is considerably higher than the next highest industry for that age range of 33 claims per 100,000 workers in agriculture.

IV. Wage Equations

The theory of compensating differentials posits that workers receive a wage premium for adverse working conditions. The standard wage equation specification used in the hedonic wage literature is of the following form:

$$\ln(wage) = \alpha + \beta Risk + X\gamma + \varepsilon$$

where *wage* is the hourly wage rate; *Risk* is a measure of job risk (in this case the risk of sexual harassment); X is a vector of explanatory variables such as years of education; $\alpha, \beta,$ and γ are parameters to be estimated; and ε is a random error term. As is standard throughout this literature, the risk measure is assigned to all individuals within the same group on which the risk measure is calculated. That is, since I calculate the sexual harassment risk measure by 2-digit industry, age group, and sex, all workers within the same industry, age group, and sex are assigned the same risk measure. This means that the residuals in the regression for workers within a given industry, age group, and sex may be correlated with each other, and standard errors that do not account for this correlation may be too small. I therefore estimate clustered standard errors to correct the standard errors for this possible correlation.

Empirical studies that have attempted to quantify compensation for working conditions other than fatalities or injuries typically do not find that workers receive a compensating differential. Since the existence of a compensating differential for adverse working conditions relies on the preferences of the marginal worker, this failure to find compensating differentials is frequently attributed to the difficulty in identifying the preferences of the marginal worker as well as to measurement error in reported working conditions in available data sets. In contrast to most working conditions, sexual harassment is universally considered a negative working condition.

For workers to receive a compensating differential for the risk of sexual harassment does not require that workers personally experience sexual harassment. The interpretation is *not* that workers are compensated for the certainty of being sexual harassed and so harassment is acceptable. Instead, workers in jobs with high risk of harassment realize that their work environment includes a risk of sexual harassment and such jobs pay higher wages. If the individual worker is actually harassed, then in addition to any compensating differential received

as part of her pay, the worker can sue and will be eligible for compensation for claims found to have merit including back pay, reinstatement in the job, promotion, and front pay. Victims can also receive compensation for medical expenses (such as psychiatric treatment) and for noneconomic damages (pain and suffering). If the claim is a Title VII claim, the victim can receive punitive damages up to a maximum of $300,000 if the employer has 500 or more employees. Title VII also provides for the losing party to pay attorneys' fees.

I estimate the wage equations separately by sex using CPS data for 2005 (2005 is chosen to immediately follow the years on which the sexual harassment rates are based, although the estimates using other years of data are similar). The dependent variable is the log of the hourly wage which is either reported directly or calculated as weekly earnings divided by usual hours worked per week. In addition to the sexual harassment rate, the explanatory variables are indicator variables for occupation (management, business, financial; professional and related; healthcare support; protective service; food preparation and serving related; building and grounds cleaning and maintenance; personal care and service; sales and related; office and administrative support; natural resources, construction, maintenance; and production, transportation, material moving), race (white; black; American Indian; Asian or Pacific Islander; or more than one race reported), Hispanic ethnicity, married, employed by the government, union member or covered by union contract, full time employment, whether paid on an hourly basis, and region. I also control for educational attainment in years, calculated from information on highest educational attainment and years in degree program, and for potential experience, calculated as age minus education minus 5.

Because there is evidence that sexual harassment is more prevalent in work settings with predominantly one sex, it is possible that any positive effect of sexual harassment for women

reflects the higher pay associated with male-dominated jobs. I also therefore control for the percent female in the individual's narrowly-defined (four-digit) industry. Descriptive statistics for the variables included in the wage equations are reported in Appendix 1.

Table 2 reports the results with separate wage regressions estimated by sex. As expected, there is an inverse relation between the percent female in the industry and wages for both men and women. Both men and women receive a statistically significant wage premium for the risk of sexual harassment. The log wage difference between a job with zero sexual harassment risk and a job with the gender-specific mean sexual harassment risk is 0.0155, or about 25 cents per hour for women, and 0.0252, or about 50 cents per hour for men. The large compensation for sexual harassment risk for men is surprising. One possible explanation is that since men infrequently file sexual harassment claims, those claims that are filed are particularly egregious and exposure to such risk warrants a larger compensating differential that received by women.

V. Concluding Remarks

Sexual harassment involving demands for sexual favors as a basis for tangible employment benefits clearly warrants its current illegal status. But there is less agreement that other forms of sexual harassment such as sexual looks or sexual jokes from coworkers that are illegal under current law should also be strictly prohibited in the workplace. Laws that attempt to sanitize the workplace of any form of sexual content may be interpreted as unwarranted paternalism and may reinforce stereotypes of women as unsuited for nontraditional jobs. Work relations may break down if coworkers fear they may be accused of sexual harassment for behavior intended as collegial or harmless, which itself may affect productivity. The central empirical issue is whether sexual harassment lowers wages by reducing productivity, or raises wages as a compensating differential. This paper shows that workers receive a wage premium for exposure to the risk of

sexual harassment in much the same way that workers receive a wage premium for the risk of fatality or injury.

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Appendix 1: Descriptive Statistics

	Means (standard deviation) or percent	
	Female	Male
Hourly wage	16.33	19.84
	(10.36)	(12.55)
Log of hourly wage	2.63	2.81
	(0.56)	(0.59)
Sexual harassment rate by industry, age, and sex	8.61	1.35
	(7.93)	(1.03)
Female share of employment in 4-digit industry	0.59	0.37
	(0.20)	(0.21)
Potential experience	20.85	20.66
	(12.31)	(11.94)
Hispanic/Latino	11.53	16.15
White	79.89	83.05
Black/African American	13.34	10.11
American Indian/Alaskan Native	0.71	0.74
Asian	4.39	4.51
Government employer	20.00	13.78
Union or employee association	13.26	15.25
Years of education	13.85	13.43
	(2.64)	(2.97)
Married	54.14	60.63
Metropolitan location	84.12	84.75
Full-time	78.49	92.25
Northeast	19.29	18.54
Midwest	23.30	22.81
West	21.48	23.38
South	35.92	35.27

	Means (standard deviation) or percent	
	Female	Male
Management, business, financial	13.04	13.30
Professional and related	25.97	17.31
Healthcare support	4.45	0.51
Protective service	1.08	3.40
Food preparation and serving related	6.09	4.39
Building and grounds cleaning and maintenance	3.01	3.82
Personal care and service	3.90	1.05
Sales	10.71	29.66
Office and administrative support	24.16	7.36
Natural resources, construction, maintenance	0.98	19.07
Production, transportation, material moving	6.62	20.04
Observations	77,896	79,383

Note: All values weighted by earnings weight. Sample is comprised of respondents to the 2005 Current Population Survey who are employed, not self-employed, ages between 18 and 64, and have hourly wages between $1.50 and $100 per hour.

Table 1: Sexual Harassment Rates by Industry

	Female	Male	Percent Female
Agriculture, forestry, fishing, and hunting	18.10	0.72	25.21
Mining	72.02	2.31	9.71
Construction	20.28	0.48	9.58
Manufacturing	15.88	1.28	30.86
Wholesale and retail trade	10.21	1.33	45.46
Transportation and utilities	17.50	1.22	24.48
Information	19.35	2.73	43.40
Financial activities	6.98	1.49	57.58
Professional and business services	14.35	1.89	43.16
Educational and health services	3.71	1.66	75.13
Leisure and hospitality	14.53	2.15	51.55
Other services	6.64	1.29	52.70
Public administration	16.67	2.20	45.94

Notes: Per 100,000 workers. Rates are calculated from EEOC Charge Data FY 2000 – FY 2004 based on claims by individuals in which at least one issue was sexual harassment and in which industry is reported. Employment data calculated using 2004 CPS.

Table 2: Wage Compensation for Sexual Harassment Risk
Dependent Variable: Log of Hourly Wage

	Coefficients (standard error)	
	Female	Male
Sexual harassment rate by industry, age, and sex	0.0018*	0.0186**
	(0.0009)	(0.0070)
Female share of employment in 4-digit industry	-0.2000**	-0.2634**
	(0.0367)	(0.0292)
Potential experience	0.0236**	0.0296**
	(0.0026)	(0.0021)
Potential experience squared/100	-0.0360**	-0.0456**
	(0.0056)	(0.0041)
Hispanic/Latino	-0.0645**	-0.1205**
	(0.0071)	(0.0100)
White	0.0011	0.0268+
	(0.0129)	(0.0154)
Black/African American	-0.0712**	-0.1257**
	(0.0152)	(0.0168)
American Indian/Alaskan Native	-0.0444+	-0.0118
	(0.0250)	(0.0244)
Asian	-0.0063	-0.0139
	(0.0171)	(0.0184)
Government employer	-0.0478*	-0.0182
	(0.0190)	(0.0165)
Union or employee association	0.0944**	0.1468**
	(0.0092)	(0.0135)
Years of education	0.0686**	0.0594**
	(0.0022)	(0.0025)
Married	0.0358**	0.0933**
	(0.0070)	(0.0062)
Metropolitan location	0.1311**	0.1170**
	(0.0057)	(0.0074)
Full-time	0.1345**	0.2332**
	(0.0146)	(0.0199)
Northeast	0.0801**	0.0581**
	(0.0069)	(0.0077)
Midwest	0.0242**	0.0181**
	(0.0053)	(0.0069)
West	0.0873**	0.0574**
	(0.0053)	(0.0074)
Management, business, financial	0.3647**	0.2532**
	(0.0256)	(0.0279)
Professional and related	0.2961**	0.1954**
	(0.0341)	(0.0336)

	Coefficients (standard error)	
	Female	Male
Healthcare support	0.0133	-0.2289**
	(0.0341)	(0.0441)
Protective service	0.0309	-0.0782+
	(0.0396)	(0.0420)
Food preparation and serving related	-0.1286**	-0.2664**
	(0.0398)	(0.0428)
Building and grounds cleaning and maintenance	-0.0956**	-0.2483**
	(0.0319)	(0.0310)
Personal care and service	-0.0787*	-0.2058**
	(0.0336)	(0.0407)
Office and administrative support	0.0813**	-0.1017**
	(0.0230)	(0.0238)
Natural resources, construction, maintenance	0.0562	-0.0488
	(0.0400)	(0.0303)
Production, transportation, material moving	-0.0388	-0.1437**
	(0.0264)	(0.0287)
Constant	1.1117**	1.3355**
	(0.0626)	(0.0617)
Adjusted R-squared	0.40	0.44
Observations	77,896	79,383

Notes: Robust standard errors clustered by two-digit industry and age group are reported in parentheses. Sample is comprised of respondents to the 2005 Current Population Survey who are employed, not self-employed, ages between 18 and 64, and have hourly wages between $1.50 and $100 per hour. All values are weighted by the CPS earnings weight.
** Significant at the 1 percent level; * significant at the 5 percent level; + significant at the 10 percent level.

Figure 1: Sexual Harassment Rates by Age, Female Workers

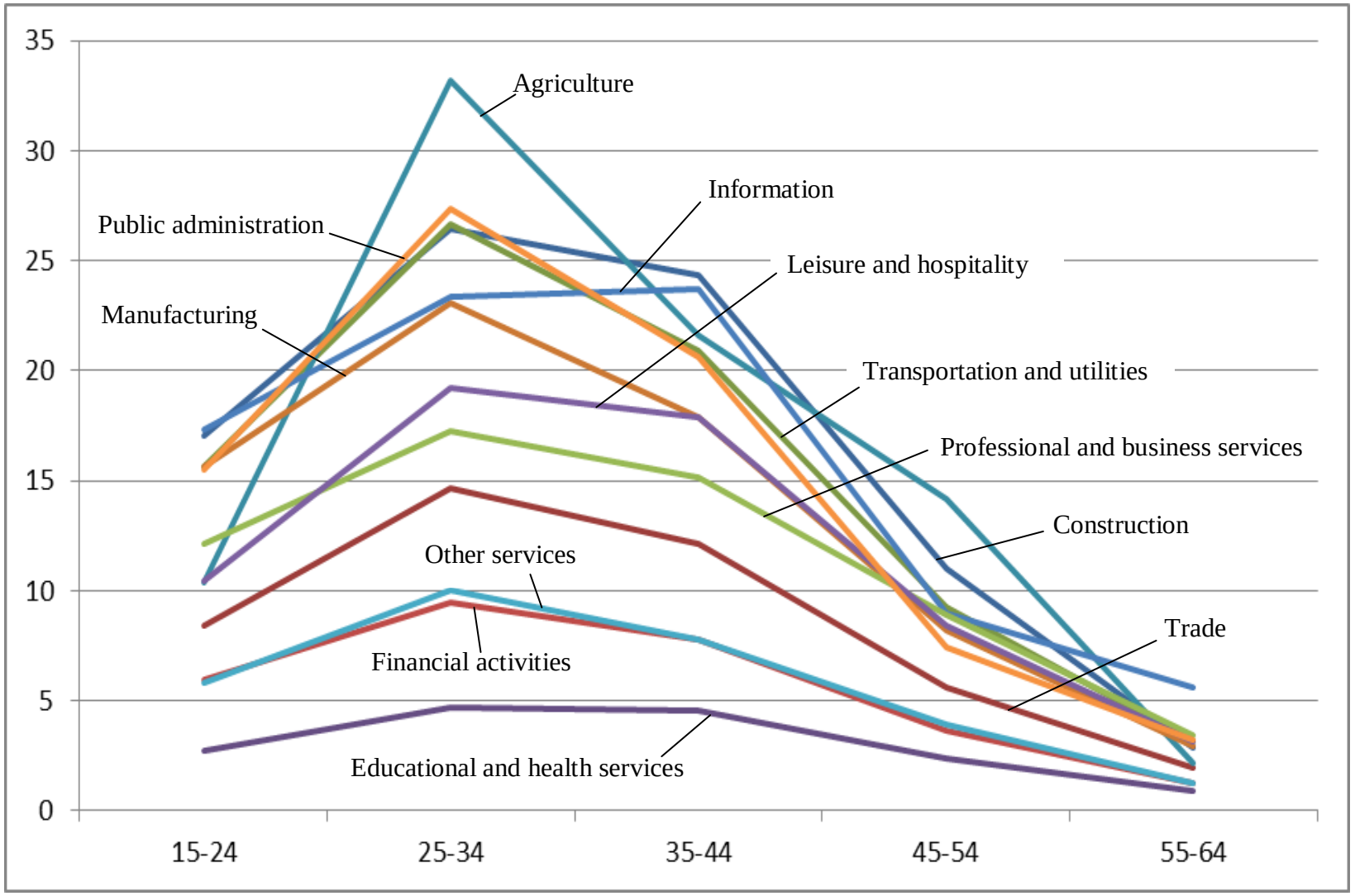

Figure Note: Reported rates are per 100,000 workers. Mining not represented in figure. Mining sexual harassment rates by age are: 53 for age 15-24; 149 for age 25-34; 93 for age 35-44; 32 for age 45-54; 9 for age 55-64.

Figure 2: Sexual Harassment Rates by Age, Male Workers

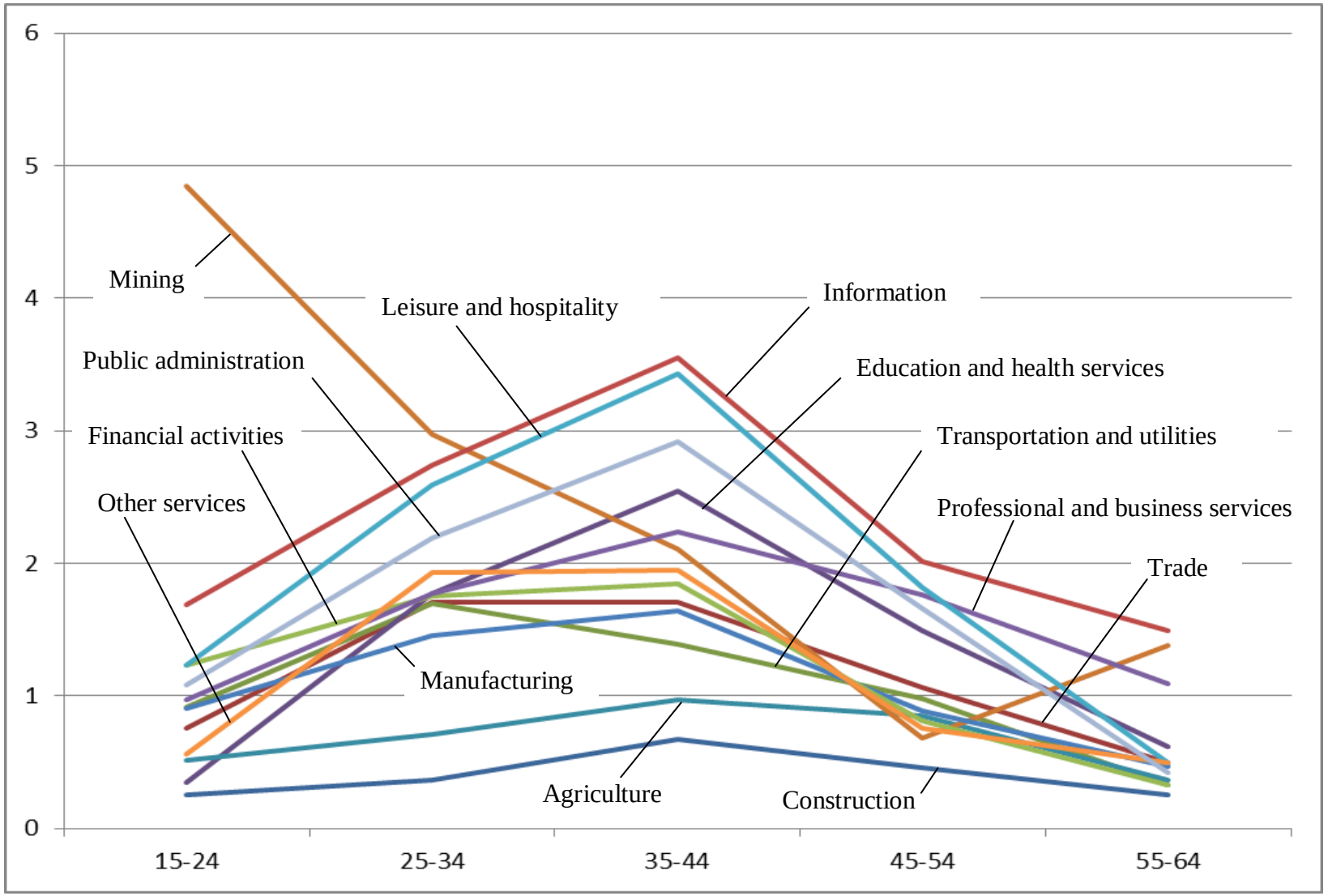

Figure Note: Reported rates are per 100,000 workers.